

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) Cause No. 4:19CR-998JAR  
 )  
LAKISHA S. SMITH, )  
 )  
Defendant. )

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SENTENCING HEARING

BEFORE THE HONORABLE JOHN A. ROSS  
UNITED STATES DISTRICT JUDGE

JUNE 17, 2021

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APPEARANCES

For United States:

Ms. Jennifer Roy  
Office of U.S. Attorney  
111 South 10th Street  
St. Louis, MO 63102

For Defendant:

Ms. Susan McGraugh  
St. Louis University School of Law  
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1                                    JUNE 17, 2021

2            (At 10:15 a.m., the proceedings returned to open court.)

3                    THE COURT: We are here and on the record in the  
4 case of the United States versus Lakisha Smith. It is cause  
5 number 4:19CR-998. The case is set here today for  
6 sentencing. The Defendant previously appeared in this court  
7 on March 11th of this year 2021, and she entered a plea of  
8 guilty to two counts of a six count indictment. She entered  
9 pleas of guilty to the charges in Counts 2 and 5. Each count  
10 charged her with aiding and abetting the filing of false  
11 income tax returns.

12                    As I indicated, the case was set here this morning  
13 for 10 o'clock. It is 10:15. The Defendant has not  
14 appeared. Defendant's counsel, Sue McGraugh, is here. The  
15 United States is appearing by Assistant United States  
16 Attorney Jennifer Roy.

17                    Ms. McGraugh, you indicated before we went on the  
18 record that you had a situation. So I want to give you an  
19 opportunity to tell me whatever you want to tell me with  
20 regard to that situation.

21                    MS. MCGRAUGH: Thank you, Judge Ross. May I remove  
22 my mask while I speak?

23                    THE COURT: You may. Yes, when you are speaking  
24 you can definitely take your mask off.

25                    MS. MCGRAUGH: Your Honor, my client is downstairs.

1 She was here relatively promptly. Her 20 year old daughter  
2 is here. She didn't have an ID nor does my client. They  
3 have given my client permission to come up here; however, she  
4 will not come up without her daughter, and I wondered if  
5 there was a way to communicate with the Marshals to allow the  
6 daughter to come up.

7 They said the only way they will allow her daughter  
8 to come up is if Ms. Roy brings her up. But I don't want to  
9 impose on Ms. Roy. She doesn't know her either. I'm in a  
10 little -- and I don't have a solution.

11 THE COURT: Okay. We will go off-the-record for  
12 just a moment.

13 (An off-the-record conversation took place. At 10:14  
14 a.m., the proceedings returned to open court.)

15 THE COURT: We are here and on the record in the  
16 case of the United States versus Lakisha Smith. It is cause  
17 number 4:19CR-998. The record should reflect that the  
18 Defendant appears in person and with counsel Sue McGraugh.  
19 The United States appears by Assistant United States Attorney  
20 Jennifer Roy.

21 The Defendant previously appeared in this court on  
22 March 11th of this year 2021. At that time, she appeared on  
23 a six count indictment. Pursuant to a written guilty plea  
24 agreement, we deferred action on Counts 1, 3, 4, and 6,  
25 proceeded on Counts 2 and 5. Ms. Smith entered pleas of

1 guilty to the charges in Counts 2 and 5 of aiding and  
2 abetting the filing of false income tax returns. The Court  
3 ordered a presentence report to be prepared. We are here  
4 today for sentencing.

5 MS. MCGRAUGH, you are here today with your client  
6 presenting her for sentencing; is that correct?

7 MS. MCGRAUGH: Yes, I am, your Honor.

8 THE COURT: And I do want to say at the outset,  
9 when you are speaking, if you will lower your mask it will  
10 help me hear, the court reporter hear. I want to make sure I  
11 hear everything that's being said.

12 MS. MCGRAUGH: Yes.

13 THE COURT: Ms. Smith, you can stay right there,  
14 but Ms. Smith, do you understand you are here today for  
15 sentencing; is that correct?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And it is important that you keep your  
18 voice up, speak into that microphone. Again, I have to hear  
19 what you say. It is important the court reporter hears as  
20 well.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So again, you are here today for  
23 sentencing; is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And before we proceed with sentencing,

1 I have some questions that I need to ask of you. I want you  
2 to listen carefully to what I say. If there anything you  
3 don't understand, I want you to stop me and ask me to repeat  
4 it or explain it to you, or you can ask for time to talk to  
5 your attorney. But I want to make sure that you understand  
6 what's going on here today, all right.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: It is also necessary for you to give  
9 full, complete, and truthful answers to my questions. Your  
10 answers are under oath, which means under penalty of perjury;  
11 do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And at this time, if you will raise  
14 your right hand, I'll ask the Clerk to administer the oath.

15 LAKISHA S. SMITH,  
16 being produced and sworn, testified as follows:

17 Q. (By the Court) will you state your full name for the  
18 record?

19 A. Lakisha Smith.

20 Q. And your date of birth?

21 A. September 9, 1981.

22 Q. Ms. Smith, again do you understand you are here today  
23 for sentencing; is that correct?

24 A. Yes, sir.

25 Q. Here today, is your mind clear, do you know exactly what

1 you are doing?

2 A. Yes, sir.

3 Q. Are you under the influence of any drugs or alcohol, or  
4 taking any medication of any kind that would affect your  
5 ability to understand this proceeding?

6 A. No, sir.

7 Q. So again, you are telling me your mind is clear. You  
8 understand everything that's going on here today?

9 A. Yes, sir.

10 Q. And you heard me go through the history of the case. Do  
11 you recall appearing, you did so by Zoom remotely on  
12 March 11th of this year. You entered pleas of guilty to  
13 those two counts in the indictment, Counts 2 and 5, each  
14 count charged you with Aiding and Abetting the Filing of  
15 False Income Tax Returns; is that correct?

16 A. That's correct.

17 Q. At the time that you entered those pleas of guilty, did  
18 you do so freely and voluntarily, because you were, in fact,  
19 guilty of each of those charges?

20 A. Yes, your Honor.

21 Q. You were with Ms. McGraugh at that time. She has  
22 represented you pretty much throughout this case. I just  
23 want to ask you generally, have you had enough time to talk  
24 to her about the case?

25 A. Yes, your Honor.

1 Q. Has she answered all of your questions?

2 A. Yes, your Honor.

3 Q. Has she done everything you have asked her to do in the  
4 case. It really is, it is a simple question. Has she done  
5 everything you have asked her to do in this case?

6 A. Yes, your Honor.

7 Q. Are you satisfied with her services?

8 A. Yes, I'm satisfied with her services.

9 Q. I talked to you at the time of the plea a little bit  
10 about what would happen here today at sentencing. I want to  
11 go over that with you again. The first thing that the Court  
12 is required to do is determine under the Sentencing  
13 Guidelines what the guideline range of punishment is in your  
14 case. The way that I do that is by determining a total  
15 offense level and a criminal history score and category.  
16 That's based on any prior record of criminal convictions that  
17 a person may have. And from that, I get a guideline range of  
18 punishment.

19 The guideline range is advisory, which means it  
20 gives guidance to the Court, but the Court is not required to  
21 follow it. After I do that, I'll consider certain factors  
22 under a section of the statute. It is 18 U.S.C. Section  
23 3553(a). There are a series of factors that the Court will  
24 consider. They include the nature and circumstances of the  
25 offenses that you have pled guilty to. The history and

1 characteristics of you as the Defendant. There are a series  
2 of other factors that the Court will consider. I'll also  
3 consider anything you and your attorney want to tell me,  
4 anything that the Government wants to tell me. I'll consider  
5 the terms of the plea agreement. Do you understand all of  
6 that, Ms. Smith?

7 A. Yes, sir.

8 THE COURT: And you know to assist the Court, I  
9 ordered that a presentence report be prepared. Counsel, Ms.  
10 McGraugh, there were disclosure copies of the report. Then a  
11 final presentence report. You received those reports,  
12 provided access to the reports to Ms. Smith, went over them  
13 with her, answered any questions she may have had; is that  
14 correct?

15 MS. MCGRAUGH: That's correct, your Honor.

16 THE COURT: And I noted for the record that there  
17 were no objections filed to the presentence report; is that  
18 correct?

19 MS. MCGRAUGH: That's correct, your Honor.

20 THE COURT: I believe it was yesterday that a  
21 letter was brought to the courthouse and filed. You had an  
22 opportunity to review the letter; is that correct, Ms.  
23 McGraugh, and just for the record, it is Document Number 78.  
24 It was a letter that appears to have been written by  
25 Ms. Smith. You have read through that; is that correct?



1 MS. MCGRAUGH: Yes, your Honor, after it was filed.

2 THE COURT: Okay. And again, that was just  
3 recently filed. In that letter, it has some other  
4 information, some of which the Court will consider when we  
5 get to the sentencing. It also raises a couple of issues  
6 with regard to certain paragraphs in the presentence report.  
7 Have you gone over that with Ms. Smith, and discussed it with  
8 her?

9 MS. MCGRAUGH: I have not discussed the content of  
10 the letter with Ms. Smith except to tell her that I did  
11 receive the letter.

12 THE COURT: Okay. Again, it makes some references  
13 to a couple of the paragraphs. Some of it I had a little bit  
14 of a difficult time understanding. I'm going to give Ms.  
15 Smith an opportunity to tell me what she wants to tell me  
16 about it. What is set out there does not constitute a legal  
17 objection, and you agree; is that correct?

18 MS. MCGRAUGH: I agree, your Honor.

19 THE COURT: Okay. Again there were no objections  
20 previously filed. I want to ask you here today on behalf of  
21 Ms. Smith, do you know of any legal objection to anything in  
22 the final presentence report?

23 MS. MCGRAUGH: I do not, your Honor, although I  
24 know Ms. Smith would disagree with that statement.

25 THE COURT: Okay.

1 MS. MCGRAUGH: And I think the Court has the  
2 contents of that in front of him.

3 THE COURT: Okay. Ms. Smith, I want to say this to  
4 you, again ordinarily when someone is represented by an  
5 attorney, I would not necessarily consider a pro se filing.  
6 I'm telling you I am considering what you have filed. I have  
7 read what you have filed. I understand, I believe, what you  
8 have in your letter. It doesn't constitute a legal objection  
9 to anything in the presentence report, but if there is  
10 something you want to tell me about those paragraphs that you  
11 talk about, go ahead.

12 THE DEFENDANT: Your Honor, I was addressing the  
13 Court with that concern, because in 2015, I was put on  
14 probation, and I was detained by a traffic stop for my temp  
15 tags. In the traffic stop, they stopped me, and I didn't  
16 have a driver's license, and they searched my car, and there  
17 was some items in my car that they said I didn't have a  
18 receipt for. So they confiscated the items.

19 The officer wrote a report. I went to jail for 20  
20 minutes. The officer wrote a report to the Probation Officer  
21 and said that the tags off the merchandise looked like they  
22 had come from another state, and that I had violated the  
23 probation and went to Atlanta. They did an investigation,  
24 and they threw the charges out, but every time I get in  
25 trouble, they say the Atlanta thing keeps coming up and

1 harboring over me again. They charged me just this year when  
2 I got put on intense probation for this. I'm sorry, your  
3 Honor, I'm a little nervous. What I got down and put on  
4 intense house --

5 THE COURT: You have to talk slow, all right.

6 THE DEFENDANT: Yes, sir. When I got put on  
7 intense house arrest, they brought back up the same Atlanta  
8 thing again, and for five year in 2015, and they used it  
9 against me. And it's like they continue to keep using things  
10 against me from my past that's double jeopardizing me, and it  
11 is hurting me on this case, you know, it hindered me on my  
12 case because.

13 THE COURT: Ms. Smith, I want to say to you there  
14 is nothing in this presentence report about anything in  
15 Atlanta that I'm going to take as being a negative, or it  
16 doesn't affect the point calculation. It doesn't affect any  
17 of those things. So to the extent that you are concerned  
18 about what happened in Atlanta, or that that's being held  
19 against you, I'm telling you there is nothing about anything  
20 related to Atlanta that I'm going to hold against you, or  
21 that the presentence report is holding against you.

22 So all I can say to you is I understand your  
23 concern. I'm just telling you there is nothing in there as  
24 it relates to anything in Atlanta that I'm going to hold  
25 against you in any way.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: So is there anything else you want to  
3 tell me?

4 THE DEFENDANT: No, sir.

5 THE COURT: I do understand you raise an issue also  
6 in the letter about the fact that you were not on supervision  
7 at the time of the indictment, and there is a paragraph that  
8 discusses -- and that's Paragraph 67 that you committed the  
9 instant offense while under a criminal justice sentence.  
10 what that's referring to, Ms. Smith, is this, that at the  
11 time that the offenses in this indictment were alleged it is  
12 the time period 2013 to 2016, you were under a criminal  
13 justice sentence. That is the sentence from cause number  
14 13SL-CR2550 out of the Circuit Court of St. Louis County.

15 So that's what that's referring to just so that you  
16 understand. I want to make sure you understand that; do you  
17 understand?

18 THE DEFENDANT: Yeah, I understand. I didn't get  
19 an understanding, because I thought it was at the time that I  
20 had got indicted with.

21 THE COURT: No, it has nothing to do with the time  
22 of the indictment. It was the time that you were committing  
23 these offenses, all right.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: So anything else you want to tell me

1 with regard to objections to anything in the presentence  
2 report?

3 THE DEFENDANT: No, sir.

4 THE COURT: Okay. All right, let me come back to  
5 you, Ms. McGraugh. Again, do you have any legal objection to  
6 anything the final presentence report?

7 MS. MCGRAUGH: I do not, your Honor.

8 THE COURT: Ms. Roy, on behalf of the Government,  
9 does the Government have any objection to anything in the  
10 final presentence report?

11 MS. ROY: No, your Honor.

12 THE COURT: To the extent that there were pro se  
13 objections filed to the presentence report, the Court is  
14 going to overrule those objections. They are not legal  
15 objections. They do not affect, in the Court's view, the  
16 guideline calculations. The Court is going to adopt the  
17 final presentence report as its findings of fact and legal  
18 conclusions in this case. Specifically its findings of fact  
19 and legal conclusions with regard to the advisory guidelines.  
20 Based on the evidence and the presentence report, the Court  
21 finds that the total offense level in this case is an offense  
22 level 15. Ms. Smith has a criminal history score of 10, puts  
23 her in a criminal history category of five. It gives us a  
24 guideline range of punishment of 37 to 46 months in the  
25 Bureau of Prisons.

1           And Ms. McGraugh, do you agree that those are the  
2 guideline calculations; is that correct?

3           MS. MCGRAUGH: That's correct, your Honor.

4           THE COURT: And Ms. Smith, do you understand that  
5 those are the guideline calculations 37 to 46 months in  
6 prison?

7           THE DEFENDANT: Yes, sir.

8           THE COURT: And Ms. Roy, the Government agrees as  
9 well?

10          MS. ROY: Yes, your Honor.

11          THE COURT: It is the procedure of the Court  
12 pursuant to Local Rule to hold a closed hearing in every plea  
13 and every sentencing hearing. This portion of the proceeding  
14 is unfortunately not public. The records are sealed.

15          I'm going to ask those of you who are observing if  
16 you will just step outside for two or three minutes. This  
17 part of the proceeding is very brief, but I'm going to ask  
18 that you to step outside of the courtroom for just a couple  
19 of minutes. So all of you observing, if you will step  
20 outside for just a couple minutes.

21          (Pursuant to Local Rule 13.05, a bench conference  
22 was held on the record and placed under seal. The following  
23 proceedings continued in open court.)

24          THE COURT: We will let everybody get back in and  
25 get situated, and then we will proceed. Okay, thank you for

1 your understanding. One other issue that I wanted to take up  
2 is there was an amount of restitution that was determined in  
3 the presentence report as to Counts 2 and 5. The amount of  
4 restitution as determined in the presentence report was  
5 \$10,416. And again, Ms. McGraugh, on behalf of Ms. Smith,  
6 any objection to that amount?

7 MS. MCGRAUGH: We do not have any objection to the  
8 amount, your Honor. We are, however, asking that restitution  
9 be waived, because she is incarcerated.

10 THE COURT: Okay. All right, do you understand  
11 that that was the restitution amount as to those two counts,  
12 Ms. Smith. It is \$10,416. Do you understand that; is that  
13 correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And the Government agrees as well?

16 MS. ROY: Yes, your Honor.

17 THE COURT: And that's the amount of restitution  
18 that the Government is seeking, correct?

19 MS. ROY: That is, your Honor.

20 THE COURT: Okay. With that, Ms. McGraugh, I know  
21 you had filed a lengthy sentencing memorandum in the case. I  
22 have had an opportunity to review that. As I indicated,  
23 there are things in Ms. Smith's letter that I viewed as  
24 related to the appropriate sentence in the case. I want to  
25 give you a chance to tell me anything you want to tell me

1 with regard to sentencing considerations. You can do it  
2 there from the counsel table, if you speak up, or you can  
3 come up here to the podium. Where ever you are comfortable.

4 MS. MCGRAUGH: I prefer the podium, your Honor.

5 THE COURT: That's fine.

6 MS. MCGRAUGH: Your Honor, thank you for giving me  
7 an opportunity to tell you about Lakisha Smith. As we made  
8 clear in our sentencing memorandum, we are requesting the  
9 Court either grant Ms. Smith probation or a year and a day  
10 sentence. Should the Court determine that the proper  
11 sentence is within the guidelines, we are requesting that the  
12 Court sentence Ms. Smith to the lowest sentence possible  
13 under the guidelines which is 37 months.

14 sufficient but not greater than necessary, and your  
15 Honor, that's the question that needs to be answered today is  
16 what sentence is sufficient to meet the ends of justice, but  
17 not more than necessary. The ends need to accomplish a  
18 legitimate goal of punishment, your Honor, and to answer that  
19 the Court needs to determine what it is that it wishes to  
20 accomplish. There is several legitimate reasons for  
21 punishment, deterrence, retribution, public safety, and to  
22 prevent recidivism, because a sentence that oversteps those  
23 legitimate bounds of punishment is unlawful and cruel.

24 I know that your Honor has read our sentencing  
25 memo, and in that memo we have attempted to help you get to



1 know Ms. Smith, and to see her as more than the offense that  
2 is in front of you in this courtroom. I hope you saw, as we  
3 see, that Ms. Smith had what could have been insurmountable  
4 barriers to success in her life. Rape, isolation, domestic  
5 violence all played a major role in her youth and continued  
6 through adulthood. But I hope you can also see what we saw  
7 outside of the trauma created those events, and what we see  
8 is resilience.

9           Your Honor, to see Ms. Smith only as a criminal and  
10 not as a hard worker, a daughter, and a beloved mother turns  
11 all of us in this well of the courtroom into what exactly the  
12 community has accused us of being, which are cogs in a  
13 machine that would just see Ms. Smith as another criminal,  
14 and turn her out of the system. And I hope that we, and I  
15 mean all of us in the well of the courtroom, are better than  
16 that.

17           So back to the question at hand. What ends do we  
18 seek when we talk about her sentence. What do we want the  
19 outcome to be. And here, your Honor, we need to expand what  
20 the outcome is to beyond Ms. Smith. Because Ms. Smith, as  
21 the Court knows, has three daughters, two of whom have not  
22 reached the age of majority, and any sentence that she  
23 receives is going to have a direct effect on those children.  
24 And you don't need to take my word for it, Judge. I'm not  
25 here speaking antidotally. That's why we provided

1 information from the National Institute of Justice, the  
2 United States National Institute of Justice that demonstrates  
3 clearly the long lasting and detrimental effects that a  
4 lengthy incarceration for Ms. Smith is going to have on her  
5 family, especially on her children.

6 And we have to wonder, your Honor, is that the  
7 result we seek. In the end, is that what justice demands.  
8 Ms. Smith is responsible for this situation. Ms. Smith would  
9 be the first person to tell you that. She entered a plea of  
10 guilty. She has presented herself to this court for  
11 punishment. She knows that she is going to get probably a  
12 prison sentence, and she is accepting of that. The only  
13 thing she has consistently told myself and our social worker  
14 Lauren Chote is what is this going to do to the kids. And we  
15 are not saying that the Court would be responsible for what  
16 happens to the children. She is well aware that her behavior  
17 has harmed her children. But it is only at this point,  
18 Judge, that we can mitigate the harm on those children.

19 Having her accept what happened, knowing that the  
20 Court is not responsible to the offense, does not give the  
21 rest of us sanctuary from the long-lasting effects of the  
22 separation from her children, and the fact that they are  
23 going to suffer trauma and other effects, and I think you  
24 have read some of those effects, incarceration, mental health  
25 problems, physical health programs, earning problems, if she

1 is given a lengthy incarceration. And I say that especially  
2 in the fact that they only learned their mother was going to  
3 be sent to prison today within the last 24 hours, and I'm  
4 concerned about compounding that trauma and asking them to  
5 endure more trauma on top of it.

6 In summary, Judge Ross, what happens in this  
7 courtroom today is going to determine who we collectively are  
8 seen by the community. Are we what the community thinks we  
9 are, or whether we are capable of listening to our better  
10 angels, and seeing Ms. Smith not as a felon and a criminal  
11 that comes in front of this courtroom, but as a whole person  
12 with her relationships to the community and her relationships  
13 to her family.

14 I think that Ms. Smith is more than this offense  
15 and doesn't deserve to be a cog in the machine, and I hope  
16 that everybody in this courtroom sees that as well. Thank  
17 you for your time, your Honor.

18 THE COURT: Thank you, Ms. McGraugh. Ms. Smith,  
19 I'm going to come back to you to give you an opportunity to  
20 tell me anything you want to tell me, but let me go to you,  
21 Ms. Roy, and again you are fine if you want to stay there, or  
22 you can come to the podium, just keep your voice up, if you  
23 would.

24 MS. ROY: Thank you, your Honor. Your Honor, the  
25 Government has filed a response to the Defendant's sentencing

1 memorandum and also requests for a downward departure and  
2 downward variance. And I addressed each of those requests  
3 individually in my response. And the Government is asking  
4 for a guideline sentence in this case between 37 to 46  
5 months.

6 And from the outset, I do want to note that this  
7 could have been a different conversation. The Defendant  
8 received all three points for her acceptance of  
9 responsibility in her -- at the time of her guilty plea. The  
10 Government considered, but decided coming in here today, that  
11 we would not withdraw that third point. That would have been  
12 available to us based on her lack of compliance throughout  
13 the course of her supervision while on Pretrial release.  
14 That would have changed this conversation to a level 16,  
15 criminal history category of 5, and range of 41 to 51 months.

16 That being said, the Defendant has a lengthy  
17 criminal history. It spanned two decades. She has several  
18 pending cases as we sit here today. She was under -- well,  
19 she committed this crime while she was under the sentence in  
20 a prior case, and the Government notes that in February when  
21 we were before the Magistrate Court for the Defendant's bond  
22 hearing, that we recommended that she be remanded. The  
23 Magistrate determined that she would be placed on house  
24 arrest and under electronic monitoring.

25 And the reason we asked for remand at that point

1 was because of her behavior again while on Pretrial release,  
2 and while bond is generally a gift, and it should have been a  
3 gift to Ms. Smith to show her characteristics, her acceptance  
4 of responsibility, her respect for the law, the deterrent  
5 effect of what was going on here, her ability to be  
6 rehabilitated, as opposed to recidivist.

7           Instead what it did was it provided a window to Ms.  
8 Smith's personal history and characteristics that showed that  
9 she had a total disrespect for the law. She continued to  
10 smoke marijuana while she was on Pretrial supervision. Not  
11 only that, she continued to smoke marijuana while on Pretrial  
12 supervision while she was operating her SUV driving her car.  
13 She was rolling cigarettes. She was smoking those marijuana  
14 cigarettes while she was driving. She was drinking alcohol,  
15 and we saw all of this. We saw it play out on Facebook. She  
16 was Facebook live video streaming her behavior.

17           Often at times that behavior included her small  
18 child in the backseat of her car while she was smoking  
19 marijuana. There were other passengers in the car while this  
20 was going on. There was an unauthorized business being  
21 conducted by the Defendant that Pretrial Services was not  
22 aware of. And so all of this was going on while she was  
23 under the Court ordered supervision; and again, it would have  
24 been an opportunity for her to show us what her true  
25 interests here, intentions were.

1           So in a sense, she was committing new crimes again  
2 while she was under supervision. We gave her opportunities  
3 while she was under supervision as well. She was given  
4 opportunities for therapy, for counseling, for drug  
5 treatment, and on neither occasion -- well, she was ordered  
6 actually to go to inpatient treatment. On the first  
7 occasion, she walked in, decided she didn't want to stay due  
8 to I believe her reasons were that it was not clean, and that  
9 people were sick there. She left without telling Pretrial  
10 services the nature of how she was going to travel. That was  
11 a violation as well, and then never went back.

12           The night before, she was supposed to return to her  
13 inpatient treatment, she reported that her daughter was ill.  
14 She had to take her to the hospital, and then Ms. Smith just  
15 never reported again to her inpatient treatment program. So  
16 again, she was given several opportunities to comply, and to  
17 accept treatment, and she didn't want either one of them.

18           Judge, I know Ms. McGraugh mentioned her family  
19 ties and responsibilities. Again, the Government has laid  
20 out and mentioned the -- I don't think I need to belabor the  
21 point. That is a very unfortunately an atypical -- or this  
22 is not an atypical situation that she is a single parent  
23 going into an incarceration situation. She hasn't provided  
24 any kind of testimony or evidence that suggests that it rises  
25 above that. That it is such a remarkable case that a

1 downward departure or a variance would be warranted in this  
2 case.

3           The Government's position is that under 3553,  
4 Defendant's history and characteristics, her lengthy history  
5 of criminal history, the characteristics we just discussed,  
6 the issue of deterrence of the -- and frankly, the safety of  
7 the community from the Defendant's future crimes. She has  
8 shown that she is noncompliant while under supervision, and  
9 that she is likely to reoffend. There is an indifference to  
10 the safety and wellbeing of others. I think that has been  
11 proven as well.

12           I will also note that I did have a conversation  
13 with Pretrial Services after I again looked at Ms. Smith's  
14 Facebook page as recently as several days ago. It is up  
15 there today as well. That Ms. Smith did post another  
16 Facebook live video in May. I believe it was May 21st of her  
17 driving her car to what turns out to be some kind of a  
18 doctor's appointment that she was ordered not to drive her  
19 vehicle. I believe we took her driver's license away. I  
20 think, and that may be why she doesn't have her ID here  
21 today. Judge Mensah ordered that she not drive.

22           There is also video posted on there of Ms. Smith  
23 operating a business out of her home. Again, this was a  
24 business that was not authorized. She is selling clothing.  
25 I believe she is also fixing people's hair as well, and

1 potentially holding tutorials on how to do that as well.

2 Those have also been Facebook live, and they are all over her  
3 Facebook page which is a public Facebook page.

4 So my understanding is that Pretrial may be  
5 actually filing another violation that hasn't been filed at  
6 this point. But that was up there today, and it has been  
7 throughout again since February when we last appeared before  
8 this Court -- or before the Magistrate Court. So for all of  
9 these reasons, the Government is asking for a sentence within  
10 the guidelines. We don't believe that there is any reason to  
11 depart or to vary below the recommended guideline sentence of  
12 37 to 46 months, thank you.

13 THE COURT: Okay. Thank you, Ms. Roy. Ms. Smith,  
14 I want to give you an opportunity, if there is anything you  
15 want to tell me, this is the time to do it. Ms. Smith, I'm  
16 going to ask you to stay right there. Thank you, just keep  
17 your voice up, if you would.

18 THE DEFENDANT: So in conscience, your Honor, first  
19 I wanted to address some of the concerns that were brought  
20 against me. I don't know if I'm allowed to from the  
21 prosecutor, but I want to address some of those concerns.

22 As far as the business that I was running, the  
23 business opened up in 2019. It was addressed with Pretrial  
24 the day that I turned myself in of December 11, 2019. I  
25 opened the business up in August of 2019. When I had got on



1 Pretrial, the business wasn't up and running, because I had  
2 just opened it up. So in December, I wasn't running a  
3 business.

4 So when things got hard for me, I started running  
5 my business, because I got permission saying that it was okay  
6 because I'm on Pretrial that I follow the rules, and do  
7 everything that I'm supposed to be doing, letting them know  
8 what's going on. So I started selling my clothing from my  
9 clothing line, ordered it from distributors, selling  
10 clothing. Yes, I do hair. It was addressed at Pretrial when  
11 I turned myself in.

12 THE COURT: I'll tell you that I'm not concerned  
13 about those issues. Again, I understand that given the  
14 nature of the offense that you pled guilty to, there were  
15 some concerns that Pretrial had. There were concerns that  
16 the Government had. I'm telling you that the fact that you  
17 may have been running a business doesn't bother me in any  
18 way. That just doesn't bother me in any way so.

19 THE DEFENDANT: So in retrospect to everything  
20 that's going on, your Honor. Yes, over the course of time in  
21 my past I have -- give me a second -- I have made mistakes in  
22 my past. Yes, I have broke the law in my past. Within the  
23 last five years, I have been trying to clean my past up. So  
24 yes, I have a lot of convictions out there that's prior to  
25 things that I have went through in my past. Yes that there

1 are still cases that are open that I'm trying to clear up  
2 from my past. It takes time. Nothing happens overnight. I  
3 have been trying.

4 Anything that goes wrong, or if something comes up,  
5 even though I don't want to face it, I go face it. I turn  
6 myself in. I try to do the right thing. On Pretrial, it was  
7 hard for me. I tried my best to do the right thing. I tried  
8 really hard to please Jameka Taylor. Yes, I messed up with  
9 this drug problem. Yes, I can't -- yes, I have a drug  
10 problem. I'm self-medicating myself from a lot of things  
11 that I have been through. I try my best to go get help. I  
12 did try treatment, and I went there. It wasn't that I wanted  
13 to leave treatment. It wasn't -- it was they were infected  
14 with a virus. Everyone was sick.

15 I got permission to leave. I was going back. I  
16 asked to go back. Months went past. I was self-medicating  
17 my kids and myself, because I was on house arrest, and it was  
18 hard. I couldn't get permission to do certain things. So I  
19 self-medicated. My baby got sick. It's not my fault. I  
20 can't force no one to get sick. I rushed her to the  
21 emergency room. They didn't even give me permission. Even  
22 though I know I broke the law, I left and took my baby to the  
23 hospital, because my baby was sick, and I took her to the  
24 emergency room and got paperwork from these people. They  
25 quarantined my baby and asked me to stop self-medicating. I

1 shouldn't bring her. I explained to them people I'm on house  
2 arrest. It is hard for me right now. I don't have a soul to  
3 help me with my children. So I try to do the best I can, and  
4 I try to not disappoint the Court and not try to disappoint  
5 Jameka in the same process and still trying to be a mother,  
6 because I have been doing this by myself for 23 years.

7           So I tried my best to please you, and I'm sorry if  
8 I let the Court down. I'm sorry if I made mistakes in the  
9 process of trying to get myself right. I apologize for my  
10 mistakes. I apologize to the Court for having to be here  
11 today. I apologize to the people that I hurt. I mostly  
12 apologize to my kids and some of the most of my mistakes that  
13 I have made in life --

14           THE COURT: Take your time.

15           THE DEFENDANT: And I would ask you whatever your  
16 decision may be, sir, I am human, and all I want to do is try  
17 to live right for this community, but I haven't had the  
18 opportunity, and I would -- yes, I have made mistakes. I'll  
19 try to clear them up, if you see me to be lenient with  
20 whatever you decide with me, sir. I'll be thankful for that  
21 just to make it back home to my children.

22           THE COURT: Okay. Ms. Smith, let me say this,  
23 obviously, I recognize, it is pointed out in the presentence  
24 report, that you had a very difficult childhood, upbringing.  
25 You dealt with things that I can't imagine how difficult they

1 had to be for you, and I recognize you have had a lot of  
2 challenges, things to deal with. I believe everything that  
3 you are saying to me here today.

4           You've dealt with drug issues, some mental health  
5 issues. It has been clear to me from the first time I saw  
6 you at the time of the plea that you need help. You really  
7 do. We talked about that at the time of the plea, and I was  
8 hopeful that we could get you in an inpatient drug treatment  
9 program. You said you that's what you wanted to do. We  
10 tried to do that. Pretrial tried to do that. I told you  
11 then that it was very, very important that you not violate  
12 any of the conditions of your bond. By all rights, I should  
13 have ordered that you be taken into custody before today,  
14 because you did continue to violate the conditions of your  
15 bond, and that's unfortunate. That's all I can say to you.  
16 It doesn't change the fact that I recognize you desperately  
17 need some help dealing with your drug problem. Again, I  
18 think your mental health issues, you need help with dealing  
19 with those things.

20           So I have given consideration to all of these  
21 factors, all of the 3553(a) factors, all of the just the  
22 mitigating circumstances in your case, which I think there  
23 are a number of them. There are also some bad things. As  
24 you know, you have a lengthy criminal history. That is sort  
25 of a continuing pattern of criminal conduct. I have to say

1 to you, and I'd say to the Government, that I don't think  
2 that the type of offenses that you have been convicted of in  
3 the past are the most serious in my mind, but they are  
4 certainly indicative of a course of criminal conduct. And  
5 again, I have considered those things. I have obviously  
6 considered the nature of the offense, the violations that  
7 occurred on Pretrial release. It was an opportunity for you  
8 to prove that you could be in the community and comply with  
9 the requirements of the law, and unfortunately, you weren't  
10 able. In some instances, you just didn't do that.

11 I understand there were extenuating circumstances  
12 too, but when I give consideration to all of these factors,  
13 the Court believes that a slight downward variance from the  
14 guidelines to a sentence of 32 months on each of the counts  
15 to run concurrent is the appropriate sentence in the case.  
16 It is sufficient, but not greater than necessary, to meet the  
17 statutory sentencing objectives. I am going to order a  
18 number of conditions. I'm hoping that we can get you some  
19 help so that you can return to your family and be in a better  
20 position to care for them and care for yourself.

21 That being said, Ms. McGraugh, do you know of any  
22 legal objection to the Court imposing the sentence as I have  
23 indicated?

24 MS. MCGRAUGH: I do not, your Honor.

25 THE COURT: Ms. Roy, does the Government know of

1 any legal objection to the Court imposing the sentence as I  
2 have indicated?

3 MR. ROY: No, your Honor.

4 THE COURT: Then no legal objection having been  
5 shown why judgment and sentence should not now be pronounced,  
6 it is then the order, sentence, and judgment of this Court  
7 that pursuant to the Sentencing Reform Act of 1984, the  
8 provisions of 18 U.S.C. Section 3553(a), it is the judgment  
9 of the Court that the Defendant, Lakisha Smith, is hereby  
10 committed to the custody of the Bureau of Prisons to be  
11 imprisoned for an aggregate term of 32 months. That term  
12 will be 32 months on each of Counts 2 and 5 with those terms  
13 to run concurrently.

14 while in the custody of the Bureau of Prisons, the  
15 Court is going to recommend that you be evaluated for  
16 participation in a residential drug abuse program. The  
17 Federal Bureau of Prisons has a great program. Ms. McGraugh  
18 can explain some of the things about that program and the  
19 benefits of the program. It is a great program, and I think  
20 it can be a huge help to you.

21 I'll also recommend that you be evaluated for any  
22 available mental health treatment program, and any  
23 occupational or educational program that you have an interest  
24 in. You are a bright talented person. You can take  
25 advantage of these programs, and as I say, hopefully return

1 to your family in a much better position.

2 with regard to placement, Ms. McGraugh, do you have  
3 a request?

4 MS. MCGRAUGH: We are requesting that Ms. Smith be  
5 placed within 90 miles of St. Louis, your Honor, to  
6 facilitate her family visiting.

7 THE COURT: The Court will include as part of its  
8 final judgment that you be considered for placement in a  
9 facility as close as possible to the St. Louis area that has  
10 a residential drug abuse, drug treatment program. I think it  
11 is imperative, absolutely imperative that Ms. Smith get that  
12 drug treatment. So I will include that as part of the final  
13 judgment.

14 Upon release from imprisonment, the Court will  
15 order that you be placed on supervised release for a term of  
16 one year on each of Counts 2 and 5 with those terms to run  
17 concurrently. The Court will order that you pay the  
18 restitution in this matter. It is a total amount of \$10,416.  
19 It is payable to the Internal Revenue Service. Payments of  
20 the restitution will be made to the Clerk of the Court for  
21 transfer to the victim. The Court will waive any interest  
22 requirement. The restitution is due immediately. If you are  
23 unable to pay the restitution in full, then I'll order that  
24 you make payments in monthly installments of at least \$100  
25 with payments to commence no later than 30 days of the

1 commencement of your supervision.

2           The Court will order that you notify the U.S.  
3 Attorney's Office of this District within 30 days of any  
4 change of your mailing or residence address that occurs while  
5 any portion of the restitution remains unpaid. I will order  
6 that you comply with the mandatory conditions of supervision  
7 that are set out in the presentence report. I'll also order  
8 that you comply with the standard conditions that have been  
9 adopted by this Court and comply with the following special  
10 conditions. Again, I'll order that you submit to substance  
11 abuse testing. That you participate in a substance abuse  
12 treatment program. I'll also order that you participate in a  
13 mental health treatment program. I'm absolutely convinced if  
14 you get some mental health treatment, if you can get your  
15 drug issues under control, you can do just fine.

16           The Court, because of the circumstances of the  
17 offense, will impose the search condition. The Court will  
18 order that you provide the Probation Officer with access to  
19 any requested financial information and authorize the release  
20 of that financial information. The Court will order that you  
21 not incur new credit charges, or open additional lines of  
22 credit without the approval of the Probation Office, and that  
23 you apply all monies received from any anticipated or  
24 unexpected financial gains to the outstanding Court ordered  
25 financial obligation. It will be a specific special



1 condition that you make those restitution payments that are  
2 going to be made part of the judgment.

3 The Court does find that you do not have the  
4 present ability to pay a fine. The Court is required by  
5 statute to order that you pay the mandatory special  
6 assessment. It is hundred dollars per count, or a total of  
7 \$200 in this case.

8 with regard to Counts 1, 3, 4, and 6 of the  
9 indictment, pursuant to the plea agreement, is there a motion  
10 on behalf of the Government, Ms. Roy?

11 MS. ROY: Yes, your Honor. Pursuant to the  
12 negotiated plea agreement, we'd move to dismiss those counts  
13 at this time.

14 THE COURT: And pursuant to the plea agreement and  
15 the motion of the Government, Counts 1, 3, 4, and 6 will be  
16 ordered dismissed. Before I go over with Ms. Smith her  
17 appeal rights, anything further on behalf of the Defendant,  
18 Ms. McGraugh?

19 MS. MCGRAUGH: No, your Honor.

20 THE COURT: Anything further on behalf of the  
21 Government, Ms. Roy?

22 MS. ROY: No, your Honor.

23 THE COURT: Ms. Smith, the Court is required to  
24 advise you that you may have the right to appeal your  
25 conviction if you believe that your guilty plea was somehow

1 unlawful or involuntary, or if there was some other  
2 fundamental defect in the proceeding. Under some limited  
3 circumstances, you might be able to appeal the sentence  
4 that's been imposed here today. You may have waived your  
5 right to appeal that by virtue of the terms of the plea  
6 agreement. You will recall there was language in the plea  
7 agreement with regard to your waiving certain appeal rights.

8           If you want to present any arguments to the Court  
9 of Appeals, you can do so by filing a notice of appeal. If  
10 you request, the Clerk of the Court will file that notice of  
11 appeal for you. You can ask for leave to file the notice of  
12 appeal as a poor person or in forma pauperis. Under almost  
13 all circumstances, the notice of appeal has to be filed  
14 within 14 days of this date. And Ms. McGraugh, I'll just ask  
15 that you go over with Ms. Smith her appeal rights, file that  
16 form pursuant to the Local Rule.

17           Ms. Smith, that brings us to the issue of you being  
18 taken into custody here today. Ms. Smith again, I talked to  
19 you at the time of the plea about abiding by those conditions  
20 of your Pretrial release. Again, I know there were some  
21 extraordinary circumstances. In some instances, there were  
22 reasons for the violations; but in some instance, there just  
23 weren't. So here today, I'm going to order that you be  
24 remanded to the custody of the Marshals. Anything further,  
25 Ms. McGraugh?

1 MS. MCGRAUGH: No, your Honor.

2 THE COURT: Then again, Ms. Smith, good luck. Take  
3 advantage of those services. You will be remanded to the  
4 custody of the Marshals at this time. If you have a  
5 question, go ahead and ask me.

6 THE DEFENDANT: I want to ask the question, can I  
7 just give my kids a hug?

8 THE COURT: I'm sorry, ma'am. You will be remanded  
9 into the custody of the Marshals at this time.

10 (The proceedings concluded at 10:08 a.m.)  
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REPORTER'S CERTIFICATE

I, Lisa M. Paczkowski, Registered Professional Reporter, do hereby certify that I am a duly appointed official Court Reporter for the United States District Court, Eastern District of Missouri, and that the foregoing is a true and accurate reproduction of requested proceedings had in the matter of:

United States of America vs. Lakisha S. Smith

In the event copies are made of the transcript herein, the court reporter takes no responsibility for missing or damaged pages.

Dated this 26th day of July, 2021.

/s/ Lisa M. Paczkowski  
Lisa M. Paczkowski  
Official Court Reporter  
United States District Court  
Eastern District of Missouri